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UNL 2993.1
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of S. Farrand et al.
Serial No. 09/924,101
Filed August 7, 2001
Confirmation No. 1891
For COUNTER SELECTION STRATEGY FOR GRAM-NEGATIVE BACTERIA
Examiner G. Helmer

Art Unit 1638

RECEIVED

July 22, 2003

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RESPONSE TO RESTRICTION REQUIREMENT

TECH CENTER 1600/2900

TO THE ASSISTANT COMMISSIONER FOR PATENTS,

SIR:

This letter is in response to the Office action of June 11, 2003, in which an election of claims between Group I (drawn to claims 1-8 and 34-35), Group II (directed toward claims 9-13, 29-33, 36-37, and 42-43), Group III (drawn to claims 14-15, 17-20, and 38-41), and Group IV (directed toward claims 16 and 21-28), for prosecution on the merits was requested.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."¹

In this case, restriction is not proper. The claims of Group I are drawn to a Gram-negative bacterium having an inducible regulatory sequence operatively linked to a nucleotide encoding a levansucrase gene. The claims of Group II are drawn to a

¹ MPEP § 803 (emphasis added).

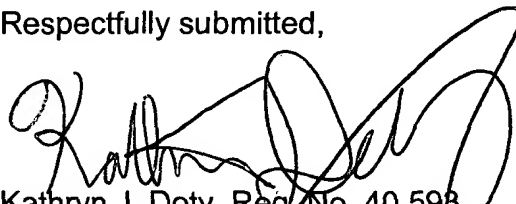
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recombinant nucleic acid having an inducible regulatory sequence operatively linked to a nucleotide encoding a levansucrase gene. The claims of Groups III and IV are each drawn to a method for transforming a plant; one step in the methods involves obtaining an inducible regulatory sequence operatively linked to a nucleotide encoding a levansucrase gene. Each of the Groups of claims, therefore, have a common element, an inducible regulatory sequence operatively linked to a nucleotide encoding a levansucrase gene. Any search of the prior art and examination involving the claims of Group I, therefore, will necessarily co-extend with the search and examination of Group II claims, Group III claims and Group IV claims. Moreover, the prior art regarding an inducible regulatory sequence operatively linked to a nucleotide encoding a levansucrase gene is sufficiently sparse to allow the examination of these claims without undue burden. Thus, as the examination of the entire application may be made without serious burden, the claims of Groups I, II, III and IV should be examined together in accordance with MPEP § 803.

Applicants, subject to the foregoing traverse, hereby elect to prosecute the claims of Group I, claims 1-8 and 34-35, drawn to a Gram-negative bacterium having a nucleotide sequence encoding a levansucrase gene within its genome.

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

Respectfully submitted,



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